

# Seminar on the Community Method Elements of Synthesis

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*with contributions from José Manuel BARROSO,  
Jacques DELORS and António VITORINO*

Our Europe Unser Europa  
La nostra Europa A nossa Europe  
Nuestra Europa ons Europa η Ευρώπη μας  
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Vores Europa A mi Európank Naše  
Evropa Nasza Europa Нашата Европа Meie Euroopa  
Mūsu Europa Mūsu Eiropa Waša Eurōpa  
Naša Evrópa Meidan Eurooppamme  
Notre Europe



# Seminar on the Community Method organised by *Notre Europe* and the Bureau of European Policy Advisers (BEPA)

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## **Elements of synthesis**

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Foreword by **Jacques Delors**

Opening speech by **José Manuel Barroso**

Conclusive remarks by **António Vitorino**



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## Notre Europe

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*Its Presidents have been successively Jacques Delors (1996-2004), Pascal Lamy (2004-2005), Tommaso Padoa-Schioppa (2005-2010) and António Vitorino (since 2011).*



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## Foreword

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**A**s the European Union faces a crisis at once political, economic, financial and social, debates unceasingly fuel exchanges and also a comparison of analyses and proposals not only on how to douse the flames of speculation but also on how to find a way out of the crisis capable of fostering fresh enthusiasm and a new spurt of growth and development.

In this context, it is crucial also to address the issue of governance, if for no other reason than to discard the excessively simplistic ideas being touted in that connection. Hence the appeal to the leading players – governments, professionals, political scientists – to engage in an exchange of concerns and views on the situation, and of recommendations for emerging from it, in a climate of serenity based on solid facts and figures.

Thus we must thank the BEPA and the *Notre Europe* think tank for persuading the best professionals, the men and women most involved in running the Community in the front line, to attend this seminar.

I shall not attempt to summarise the papers because they are both full and explicit in themselves. Nor do I intend to draw any conclusions from them. The texts must simply be read attentively. They provide analysis grids and they describe complex mechanisms that are constantly evolving under the constraints of the treaties and of the unfolding of events.

Naturally, the two poles of the debate remain the Community method and the intergovernmental method. These two focal points, in their original purity if I may call it like that, remain crucial yardsticks in the reflection.

Thus, we are armed to dissect the specific system at work, a mix of the two methods in a ratio which has changed in the past and which can change again in the future.

The wealth of contributions and the players' unparalleled experience make this document a crucial tool for understanding, analysing and then, if necessary, formulating proposals.

The Union has three imperatives that it needs to address: necessity, effectiveness and legitimacy. It is around these three criteria that we have to build the Union's institutional and democratic renewal.

The discourse on the method cannot be separated from the assertion of a vision for Europe – an additional difficulty, a major difficulty for those who want governance to be of useful service to their chosen vision and to cause the construction of the Community to move forward on every level we could hope for.

This seminar will help each of you to better serve the cause of a Europe united in its diversity.

Thank you, and good luck to all of you trailblazers in the field of new hope in Europe.

*Jacques Delors – Founding President of Notre Europe*

# Table of Contents

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<b>Introduction</b>	<b>p. 1</b>
<b>1. Identifying the constituting parts of the Community method</b>	<b>p. 3</b>
1.1. The philosophical, legal and institutional foundations of the Community method	p. 3
1.2. The right and monopoly of initiative for the European Commission	p. 4
1.3. Qualified majority voting in the Council of Ministers	p. 5
1.4. The obligation to implement decisions at the national level	p. 6
<b>2. The pragmatic evolution of the Community method as a central element of the European integration process</b>	<b>p. 7</b>
2.1. The benefits of the Community method in terms of flexibility	p. 7
2.2. The emergence of the European Council, as an institution, as a result of the Lisbon Treaty, has had an important impact on the functioning of the Community method	p. 8
2.3. The constant strengthening of the European Parliament's role has also had a major impact on the functioning of the Community method	p. 10
2.4. Even the role of the Council of Ministers evolved quite a lot since the origins	p. 11
<b>3. The "Community method" was at test, between the crisis and the new Treaty</b>	<b>p. 13</b>
3.1. The comparative advantages of the Community method and alternative ones	p. 13

3.2 The ongoing crisis is a “reality check” for the Community method	p. 15
3.3. The organisation of “differentiation” within the EU is an acid test for the Community method	p. 17
<b>4. The institutions’ political representativeness affects the degree to which they can participate in the Community method’s application</b>	<b>p. 19</b>
4.1. The European Council’s ambiguous functioning and impact could be clarified	p. 19
4.2. The European Commission’s functions, composition and election should be revised only jointly	p. 20
<b>5. The functioning of the Community method is facing a challenge in terms of democratic oversight, both at the European and national levels</b>	<b>p. 25</b>
5.1. The need to have more politics in the EU decision-making system	p. 26
5.2. An increased role for the national parliaments, at the European level as well as at the national one	p. 28
5.3. A more “political” European Parliament would reinforce the EU’s legitimacy	p. 29
<b>Annex 1 – Programme of the seminar on the Community Method</b>	<b>p. 31</b>
<b>Annex 2 – Opening Speech by José Manuel Barroso: “European Governance and the Community Method”</b>	<b>p. 33</b>
<b>Annex 3 – Concluding Remarks by António Vitorino: “The Community Method: Historical Evolutions and Political challenges”</b>	<b>p. 47</b>

## Introduction

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The working seminar on the Community method co-organized by the Bureau of European Policy Advisers (BEPA) of the European Commission and *Notre Europe* (see *Annex 1*) was introduced with a key-note speech by the President of the European Commission José Manuel Barroso and was closed with concluding remarks by the President of *Notre Europe* António Vitorino (see *Annexes 2 and 3*).

This seminar was structured around two panels, in which six distinguished speakers could deliver their views and answer to questions. A working lunch allowed the three Secretary Generals of the Commission, the Council and the European Parliament to contribute to the reflections.

These successive inputs and the contributions of the animators and all the participants are reported below under the “Chatham House” rule. They led to the identification of five main issues and numerous points for present analysis and future direction<sup>1</sup>:

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1. The views expressed here are not necessarily those of *Notre Europe* or of BEPA.

1. Identifying the constituting parts of the Community method;
2. The pragmatic evolution of the Community method, as a central element of the European integration process;
3. The “Community method” was at test, between the crisis and the new Treaty;
4. The institutions’ political representativeness affects the degree to which they can participate in the Community method’s application;
5. The Community method is facing a challenge in terms of democratic oversight, both at the European and national levels.

# 1. Identifying the constituting parts of the Community method

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The “Community method” has been defined through several elements of analysis, underlining its philosophical, legal and institutional dimensions.

## 1.1. The philosophical, legal and institutional foundations of the Community method

### **Philosophical foundations: a method based on the non-domination principle**

- a method adapted to the radical pluralism of the EU and based on a balance of powers established to integrate all the interests at stake and promote “unity in the diversity”;
- a method promoting fairness and equal treatment of member states, even if it’s complex;
- a third way rejecting the pure intergovernmental and supranational methods.

### **Legal foundations: a normative decision-making process**

- a method founded on the rule of law (“Rechtsgemeinschaft”);
- a quite original “law making approach”, even if it is sometimes possible in other international frameworks (WTO);
- supremacy and direct effect of the EU law as a cornerstone of the Community method.

### **Institutional foundations: three main distinctive components**

- the monopoly of legislative initiatives of the European Commission;
- qualified majority voting in the Council of Ministers;
- the obligation to implement decisions at the national level, including through judicial enforcement mechanisms.

## **1.2. The right and monopoly of initiative for the European Commission**

### **This monopoly of the Commission covers almost all policy areas**

- it broadly covers almost all initiative of legislative nature;
- it does not cover Common Foreign and Security Policy as well as Justice and Home Affairs, where a group of member states can propose a text – but hardly ever do it;
- this exclusive right of legislative initiative is a protection of smaller member states against a potential coalition of the bigger ones, as well as a tool to avoid unorthodox proposals.

### **The agenda setting of the legislative initiatives is largely shared by different institutions**

- holding the right of initiative does not mean that, intellectually, all the initiatives should come from the Commission: what is important is the draft of the text;



- as highlighted in a recent study<sup>2</sup> published by *Notre Europe*, the Commission has been influenced, in a positive way, by the European Council and the European Parliament in its exercise of its right of initiative: the role played by these two institutions in terms of political impulsion is not new and is legitimate.

### **The monopoly of initiative allows the Commission to draft the content of the text proposed**

- the Commission can define the scope and the substance of the initiatives proposed;
- this prerogative is extremely important in order to put the debate and the final decision in their proper context, and must be maintained;
- if the drafting of the texts was to be exercised (or co-exercised) by another institution, this could fundamentally change the balance of powers within the institutional system.

## **1.3. Qualified majority voting in the Council of Ministers**

### **The qualified majority voting was foreseen in the Treaties since the origin, but only saw the light of the day with the Single European Act**

#### **Its implementation has a positive factual dimension**

- the transfer to qualified majority voting has a positive effect on the widely-shared culture of compromise<sup>3</sup>;
- the possibility to vote with qualified majority means higher efficiency;
- the reversed qualified majority is an example that reduces even further the ability of member states to oppose a Commission proposal.

2. See Daniela Corona, Costanza Hermanin and Paolo Ponzano, “[The Power of Initiative of the European Commission: A Progressive Erosion?](#)”, *Study No. 89, Notre Europe*, January 2012.

3. See Stéphanie Novak, “[Qualified majority voting from the Single European Act to present day: an unexpected permanence](#)”, *Study n°88, Notre Europe*, November 2011.

### **The qualified majority voting system has also a symbolic dimension**

- the possibility to veto is taken away from an individual member state;
- national discourses often point to the fact that unanimity is “abandoned” and thus sovereignty “lost”;
- this symbolic dimension is important in an EU where half of the member states re-discovered their sovereignty in the late 1990s.

## **1.4. The obligation to implement decisions at the national level**

### **Supranational institutions have been established to ensure credible commitments by the member states**

- the commitments taken by the member states need to be controlled by a third party;
- the Commission has to follow up the good application of what has been decided, in complement of the Court of Justice;
- the elaboration of the Treaty on Stability, Coordination and Governance in the EMU shows that the enforcement powers of the Commission and the Court of Justice are still perceived as useful tools, even if their role is not uncontested.

### **The Court of Justice of the EU plays a key role**

- the Court of Justice represents a constant influence, however, not foreseen in this intensity at the origins;
- certain landmark judgments (direct effect and supremacy of Community law) have led to a distinct “Community of law”;
- the recent judgment of the Czech Court refusing to endorse a judgment from the EU Court of Justice could be a direct challenge to the Community method.

## 2. The pragmatic evolution of the Community method as a central element of the European integration process

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The original functioning of the Community method dates back to the European Coal and Steel Community and was then – partly – included into the European Economic Community, but its application has come a long way since then. Debates on the Community method can turn into theological debates about defending different dogmas, but careful evaluation of its evolution helps avoiding this pitfall.

### 2.1. The benefits of the Community method in terms of flexibility

#### A flexibility shown in many occasions (crisis, new Treaty)

- the “Empty Chair Crisis” prevented the move towards qualified majority voting, but this transition could be applied with the Single European Act, even if some sectors still fall under unanimity;
- a “three pillars structure” was established by the Maastricht Treaty but was finally abandoned with the Lisbon Treaty;

- European construction has always had to mediate between the imperatives of efficiency, of legitimacy and of necessity, and, more often than not, it is the Community method that has surfaced in the centre of this triangle.

### **The natural need for adaptation**

- any working method must be given the opportunity to adapt itself to changing circumstances, as it is the case for the Community method and European integration, without undermining both originality and force of the method as a point of reference;
- adapting decision-making to a new balance of powers should not be seen as a betrayal of traditional values and procedures, but as a necessary sign of flexibility in a complex institutional system (the emergence of the European Parliament is a key example of this);
- all the adaptations of the Community method have also been made possible because they are not the product of a “zero sum game” between the European institutions – the role of the EU at large has indeed grown in parallel.

## **2.2. The emergence of the European Council, as an institution, as a result of the Lisbon Treaty, has had an important impact on the functioning of the Community method**

### **A lot of confusion affects the perception of the European Council and, more widely, of the “intergovernmental method”**

- the meetings of the Heads of State and Government should not be mistaken as representing an “intergovernmental method” which in general refers to cooperation forged outside of the Community framework (for instance, the Schengen agreement until 1999); thirty years ago, there were no overlap between what was decided in and outside the institutions; a confusion was created with the “pillar

structures” established by the Maastricht Treaty; only the cooperation launched outside of the EU framework should now be considered as “intergovernmental”;

- the establishment of a permanent President of the European Council also had an impact on procedures and perceptions in the institutional system, as it imposes the redefinition of the balance of powers with the President of the Commission;
- a certain confusion is also created when the Treaty on Stability, Coordination and Governance is referred to as an “intergovernmental” treaty, because any treaty is concluded by several governments willing to do it; this confusion is all the more paradoxical with a treaty which reinforces the role of the Commission.

### **The European Council is now fully part and parcel of the Community’s institutional “trapezium”**

- set up in the 1970s, the European Council has seen its role gradually formalised and it was sanctioned as a “European institution” by the Lisbon Treaty, even if its institutional influence grew well before this treaty (example of the multiannual financial framework);
- the European Council is part of the Community method from the “input side”: the President of the Commission is indeed a full member of it;
- the European Council is also part of the Community method on the “output side”: it produced fundamental contribution to the European construction (example of the EMU, on the basis of a committee chaired by Jacques Delors);
- the European Council has an “elevator”/agenda setting function, because it has the legitimacy and strength to do it; at the same time, the article 15 of the Treaty on European Union clearly specifies that the European Council may not legislate and therefore protects the original Community method.

## **2.3. The constant strengthening of the European Parliament's role has also had a major impact on the functioning of the Community method**

**The influence of the European Parliament's role has been strengthened by all the recent treaties**

- in terms of legislative powers, by all the major European treaties since the Single European Act;
- in terms of budgetary powers with the Lisbon Treaty.

**The increasingly frequent conclusion of “early agreements<sup>4</sup>” between the European Parliament and the Council has had an important consequence in terms of institutional balances**

- while extending co-decision procedure is extremely positive from the standpoint of legitimacy, in practical terms it leads the European Parliament and the Council to negotiate directly with each other and puts the Commission on the sidelines;
- it causes the Commission to show far greater hesitancy in the exercise of its right to withdraw its proposals and then deprives it of what used to be a major weapon.

**A “micro-management” of the European Commission has been put in place**

- it can be seen in the “framework agreement” which the Commission and the European Parliament negotiated after the resignation of the Santer Commission;
- this agreement was concluded when the Commission was in a position of major weakness, which is not the case any longer;
- the effects of this micro-management on the dynamism of the Commission and, more widely, on the Community method is questionable.

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4. See Olivier Costa, Renaud Dehousse and Aneta Trakalová, “Co-decision and ‘Early Agreements’: An Improvement or a Subversion of the Legislative Procedure?”, *Study No. 84, Notre Europe*, November 2011.

## **2.4. Even the role of the Council of Ministers evolved quite a lot since the origins**

### **The Council of Ministers acts more and more under the leadership of the European Council**

- the EU Council took the lead in many sectors (example of the CFSP);
- the General Affairs Council gradually abandoned major decision-making to the European Council (example of the multiannual framework).

### **The Council of Ministers became the 2<sup>nd</sup> branch of the legislative power**

- it gave up many of its executive activities with the establishment of the European Council and the creation of the High Representative for the CFSP;
- the end of the rotating presidency of several important formations of the Council played an important role (CFSP, defence, Eurogroup);
- finally the Council of Ministers became more or less equal to the European Parliament, even if it is not organized the same way; it needs to cooperate even better with the European Parliament, on the basis of new regular meetings (between the Secretary generals, etc.).





### **3. The “Community method” was at test, between the crisis and the new Treaty**

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**R**ecent attempts to theorize another European method (the so-called “method of the Union” mentioned by Angela Merkel in her Bruges speech) or to promote firmly the intergovernmental method (Nicolas Sarkozy) fuelled a wider debate on the comparative merits and limits of the Community method to face certain challenges. This debate was also nurtured by many references to the impact of the crisis and, more precisely, on the consequences of the ongoing reform of the “EMU governance”.

#### **3.1. The comparative advantages of the Community method and alternative ones**

##### **The Community method is praised for its efficiency**

- the legislative initiatives can be well designed by the Commission because they are largely defined in connection with the other institutions and the outside world, through numerous checks and counterchecks;

- the Commission can rely on services holding a high level of expertise, which is not the case of the European council (the works of the so-called Van Rompuy Task Force were largely inspired by input from the Commission, allied with the European Parliament);
- more than 80% of the texts proposed by the Commission in 2011 had been adopted after a first reading, which is also a sign of efficiency.

### **The Community method effectiveness is also underlined**

- one of the Community method added value relies on its enforcement capacities, with the key role played by the Commission to monitor the implementation of the decisions taken, and then to build trust between member states and stakeholders;
- the European Council can be considered as the political engine of the EU, but it can not play a key role in terms of implementation; e.g. the implementation of the decisions announced on the 21<sup>st</sup> of July 2011 has been extremely slow.

### **Alternative methods can be useful in some cases**

- the intergovernmental processes can promote a pioneer approach: when the EU has no competencies, the alternative is between European positions through an intergovernmental approach or no action; such an approach has then been privileged to deliver the funds used for the “EFSF” or to define the European position at the G20; one of the central issue is then to reincorporate this initiative in the Community framework;
- the “open method of coordination” can also bring some new topics on the EU agenda – even if its concrete influence is quite weak;
- the European Council is well equipped to intervene in times of crisis: it can then be a kind of “Deus ex machina” acting through more or less formal procedures, while the Community method at large is rather ill adapted to crisis management, with its time consuming balances and safeguards, its three potentials readings, etc.

### **3.2 The ongoing crisis is a “reality check” for the Community method**

**During the last 3 years, the needs for crisis management quite logically reinforced the role of national authorities**

- people need to see their Heads of state and government taking the decisions, because they hold the highest degree of legitimacy and are identified as such by the citizens – it’s not primarily a matter of competencies and efficiency, but of legitimacy;
- it was quite normal to have an involvement of national parliaments in the European decision-making process: they have to agree on the use of national money, as well as on the ratification of treaty changes; on the other side, the European Parliament has not been directly involved because most of the European decisions taken were of executive nature;
- the decisions of the Heads of state and government were made and applied slowly but, at the same time, historians may judge that very substantial steps have been made by the European institutions as a whole in a short period of time (actions of the ECB, Eurozone summits, EFSF and ESM, Six-Pack and Two-Pack, etc.);
- the challenge is now to articulate better the implication of national decisions-makers and the functioning of the Community method: when the house is in fire, the firemen can come through the windows, but the windows should not become the new doors.

**The reinforcement of the European monitoring on national policies is to be consolidated**

- there is a general need to convince that this reinforced monitoring is a choice, both by the providers (it is a bit of an “insurance policy”) and the beneficiaries (which could say no and opt out), and that this new monitoring could have a positive impact on national politics (the main objective is not necessarily to reduce the space for national politics);

- the high degree of intrusiveness of the Troika in the three “countries under program” has been presented as a logical compensation for the solidarity granted by the EU, and especially the countries paying a lot; the form of the Troika and Commission interventions should also be monitored carefully (the Commission’s role is first to reduce mistrust);
- the Community method will have to confirm its ability to obtain the implementation of all the measures recently taken (Six-Pack) to reinforce the monitoring of the excessive deficit sustainability<sup>5</sup>; one of the challenge at stake is to avoid bilateral relations between the Commission and each member state, and to have all the member states involved in the follow up of national measures (system of crossed “rapporteurs”).

**The temptation to bypass the Community method has failed, and this method is finally reinforced**

- the Commission was reinforced by the adoption of the “Six-Pack”: its capacity to monitor and influence national budgetary policies is considerably stronger now;
- the negotiations leading to the adoption of the Treaty on Stability, Coordination and Governance in the Economic and Monetary Union<sup>6</sup> (“TSCG”) showed that the Community method was a unique tool to have binding decisions from the European level; its institutions (Commission and Court of Justice) have finally been backed by the countries willing to have more efficient mechanisms (for example Germany);
- even if the crisis led some countries to express different needs and to exercise different level of responsibilities, these unavoidable political imbalances can only be compensated through the use of the Community method.

5. See Renaud Dehousse, “The ‘Fiscal Compact’: Legal Uncertainty and Political Ambiguity”, *Policy Brief No. 33, Notre Europe*, February 2012.

6. See Valentin Kreillinger, “The Making of a New Treaty: Six Rounds of Political Bargaining”, *Policy Brief No. 32, Notre Europe*, February 2012.

### **3.3. The organisation of “differentiation” within the EU is an acid test for the Community method**

#### **The reform of EMU governance demands a response to the crucial issue of a differentiation compatible with the application of the Community method**

- in a pessimistic view, the TSCG could be perceived as an element of Angela Merkel’s strategy to promote a new “Union’s method” as well as the first step towards a progressive marginalization of the United Kingdom;
- a more optimistic view states that many provisions of the TSCG finally rely on the European institutions’ role (the Commission in particular) and that the repatriation clause of the Article 16 foresees that all these mechanisms could go back to the EU framework;
- the TSCG can be perceived as a way to promote a more and more homogeneous Europe (at least in terms of budgetary policies) but should also maintain a large diversity in economic and social terms: it will need time to see how it can really organize “unity in the diversity”.

#### **The differentiation could be organized thanks to “enhanced cooperation”**

- in theory, the enhanced cooperations are an ideal formula because they allow willing member states to move forward while leaving the door open for those that may wish to join them at a later date;
- to date it has proven possible to launch only two cases of enhanced cooperation, in connection with the right to divorce and with the European patent – because even though the Schengen agreement harks back in spirit to such a step, it was in fact concluded outside the treaty framework;
- it is worthwhile stressing that the EMU is not an “enhanced cooperation”, as all the member states are supposed to participate in, except those which negotiated an opt out.

### **The conditions of involvement of the Community institutions and the member states in a differentiation process needs to be clarified**

- it is logical that the EMU should only concern the members of the “Eurogroup”, even if a majority of non-Eurozone member states were eager to sign the TSCG;
- it is hard to see why and how only the members of the Commission or of the European Parliament coming from Eurozone countries should take part in debates and decisions relating to the Eurozone, as the two institutions represent Europe’s general interests and the European citizens in the broader sense of the term; it is a matter of safeguarding the foundations of the Commission’s and the European Parliament’s political legitimacy while also safeguarding the EU’s institutional unity;
- at the same time, there is a need to envisage the prospect of an enhanced cooperation being subscribed to by only nine member states yet which, in view of the issues in play, could well involve a majority of, or even exclusively, members of the Commission and of the European Parliament from the other eighteen EU member countries; this is a political challenge that should get probed well in advance.

## **4. The institutions' political representativeness affects the degree to which they can participate in the Community method's application**

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The political representativeness of the European institutions and the way it was perceived have a key influence on the functioning of the Community method. If the European Parliament was mentioned (*see part 5.3.*), the discussions clearly focused on the representativeness of the European Council on the one hand, of the European Commission on the other hand.

### **4.1. The European Council's ambiguous functioning and impact could be clarified**

#### **The status of the European Council and of its members**

- the fact to have elected leaders meeting very frequently reinforced its visibility, but it also fuels popular expectations around the outcomes of these meetings, which are not always decisive;
- none of the elected leaders who meet at the European Council was elected especially to do this job in a European perspective; this can reinforce the tensions around the integration of purely national

views into the decision-making process, with the support of the Coreper and the General Affairs Council;

- the creation of a stable President of the European Council helped to increase the efficiency of its works, but it also created a tension with the Commission in terms of division of power.

### **The importance to respect the balance of powers between member states**

- the fear of a “directoire” formed by the “big” member states is growing, especially in reference to the French and German tandem in the recent period – even if these member states do not necessarily agree with each other;
- the emergence of an “hegemon” is stated: Germany’s bigger influence should be considered but not challenge the equilibrium of the whole institutional system;
- the concept of “responsibility” could be a useful one to grasp the European political reality, because it includes the wish and capacity to answer and to decide – the different level of responsibility between member states could be recognized this way, even if it does not exclude collective responsibility.

## **4.2. The European Commission’s functions, composition and election should be revised only jointly**

### **The Commission as promoter of the European public good and/or “honest broker”?**

- as a promoter of the European general interest, the Commission is a key political actor whose legitimacy derives from its deep expertise as well as from its neutrality as regards party lines politics – it has then a “technocratic” dimension to be asserted;
- the Commission also plays the role of an “honest broker” which tries to integrate the interests of the member states and those promoted



by the European parliament, so as to “reduce mistrust” between all the decision-makers;

- beyond this somehow unavoidable ambiguity, the key question is to have a Commission using all the tools it has to influence the other institutions: the ability to withdraw a proposal if the Council and the European Parliament concluded an unsatisfactory agreement is one of these tools; the code of conduct concluded with the European Parliament is a tool diminishing the ability of the Commission to act as freely as the treaty provisions authorize it to do;
- the use of the enforcement powers of the Commission, especially as regards competition rules, suppose a high degree of independence and neutrality: it would not be compatible with a more politicized Commission, whose members would act in conformity with party lines (an independent body should then be created for these tasks).

### **The composition of the Commission appears to be, for some, an important issue**

- the Commission currently consists of one national from each member state, and at the same time it is vested with its authority by the political majority in the European Parliament: this state of play traduces the twofold nature of its legitimacy, but does not necessarily reflect its role of promoter of the European general interest;
- the reduction of the size of the Commission could be promoted for three different reasons: first to improve its cohesion and collegial functioning; second to fight against the impression that the Commission is a kind of “Coreper 3”, with one representative per member states (it is not necessary to have one commissioner per country to take into account the positions of the member states); third to allow a more balanced composition as regards the member states influence, i.e. a better representation of the “big” member states vis-à-vis the small and medium ones (the Commission being described as a friend of the small and medium member states);

- the current status of the Commission is not necessarily an obstacle: it could even play a more assertive role if the college was to take decisions on the basis of votes and increase its political capital with new initiatives.

**The designation of the president of the Commission appears to be key to clarify the representativeness and then functioning of this institution**

- the first option put on the table consists of the preservation of its dual legitimacy, by maintaining the link with the European Council and avoiding forging an exclusive link with the European Parliament – such an option helps to avoid a strong political connotation to the Commission;
- the second option consists of a President of the Commission directly nominated by the European Parliament, rather than by the European Council (as happens today) in an effort to clearly reaffirm the Brussels college of commissioners’ parliamentary legitimacy; during the “Convention on the Future of Europe” Michel Barnier has suggested adopting both national and transnational lists in the European elections while specifying that the “number one candidates” on those lists would be the natural candidates to the post of President of the Commission; the member states could also disclose during the European Parliament campaign who they will support as potential candidate for the presidency of the Commission, as well as the name of the commissioners they would propose;
- the third option would consist of a direct election of the President of the Commission, which could intervene after the merging with the post of President of the European Council (it was John Bruton’s proposal during the Convention); such direct election would break the link between this President and its native country (he should not be considered as representative of);
- even if the second option can be considered as a potential tool to reinforce the political authority of the Commission, it was also under-

lined that this institution should continue to enjoy the backing of a broad political coalition, given the fact that it would be dangerous for its internal functioning to be based on the co-existence of a majority and of an opposition.



## **5. The functioning of the Community method is facing a challenge in terms of democratic oversight, both at the European and national levels**

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**T**here have been intense discussions about the ability of the Community method to deliver legitimacy and democracy. It has been stated that the global output legitimacy is now less obvious (deliver peace and prosperity) and that the input legitimacy was to be further reinforced. The joint strengthening of democratic legitimacy and parliamentary legitimacy at the national and European levels has then been considered as a priority, to be addressed on the basis of several complementary orientations.

## 5.1. The need to have more politics in the EU decision-making system

**The limited nature of the “European political space” is one of the source of the “democracy deficit”**

- the EU system is an example of “compound democracies”<sup>7</sup> based on a multiple diffusion of powers which guarantees that any interest can have a voice in the decision-making process, and no majority will be able to control all the institutional levels of the polity; this brings structural limits in terms of decision-making capacity and accountability;
- the functioning of the European decision-making system aims to promote the “consensus of the consensus” in the Council, in the European Parliament and between the three institutions: this produces an apparent deficit in terms of pluralism, with no clear distinction between a government and an opposition (as stated by the Karlsruhe Court) and tends to favour agreements based on the “least common denominator”;
- many decisions can be taken by the Council without discussion at the Ministers’ level or after a deal concluded by the president of the “Coreper”, the rapporteurs of the European Parliament and a director from the Commission: this deficit of visibility is only reduced in some striking cases (example of the services directive);
- many legislations discussed at the European level are technical and sometimes boring, and they are adopted after a very long decision-making process: the challenge is then to highlight the main political and human issues at stake (which is a matter of politics, not a matter of communication campaigns).

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7. Sergio Fabbrini, *Compound democracies – Why the United States and Europe are becoming similar*, Oxford University Press, 2010.

## **The need for a better political interaction between the national and European levels**

- there is an insufficient continuity between the European and the national agendas, because of the lack of a “shared ownership” of the European agenda: the national authorities tend to look for visible satisfactions for their national parliament and public opinion instead of considering that “Brussels is us”;
- the EU is now perceived as a growing constraint on national public spaces and political lives: the way it can influence domestic choices has then to be clarified;
- the Commission should have a deeper knowledge of member states, so as to integrate better their specificities and concerns: the “country desks” established in some of its directorate general (example of the DG Regio) could be created in others;
- the development of a European political life will be difficult given the absence of common sense and culture and of unique language (this is a clear difference with the USA): the priority is then to europeanize national political lives (for example by trying to promote more debate on the main European orientations during the parliamentary campaigns).

## **“Proxy politics” should be developed so as to increase the citizens involvement in the decision-making process**

- it has to be acknowledged that the European construction was the project of the elites since the start and that in some cases, the political leaders can take decisions which do not have a full support of the public opinion (example of Helmut Kohl on the EMU); but having said this, there is a global need to give more consideration to the citizens to reinforce the legitimacy of the EU;
- there is a balance established at the EU level between “no possibility of exit” on the one hand, “strong voice to be expressed”

on the other hand<sup>8</sup>, so that everyone can keep in the negotiation process: the fact to integrate better the citizens' voice then requires to promote the structuration of EU politics on the basis of citizens line rather than long-term lines (it does not necessarily require institutional reforms);

- political parties should play a key role to better structure people's choices: they need to exploit the full potential of the Lisbon Treaty so as to present clear alternatives in terms of programmes and candidate for the presidency of the Commission in 2014 – then transforming these next European Parliament elections in real “European elections”;
- given the fact that changing the “European government” is structurally impossible, bringing citizens and contestation back in the system could require a more intensive use of the “participatory governance” tools.

## **5.2. An increased role for the national parliaments, at the European level as well as at the national one**

### **The need for an increased parliamentary control at the national level**

- there is a strong lack of symmetry between the oversight exercised with regard to the Commission and the Council: for the members of the latter, the democratic oversight exercised is both diverse and globally limited, due to the variety of national practices in the way parliaments monitor the work of their governments;
- the Karlsruhe Court decisions led to an increased control of the *Bundestag* over the acts of the German government: even if they do not really support the Community method, these decisions con-

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8. Joseph Weiler, “The European Community in change: exit, voice and loyalty”, Royal Irish Academy, *Irish Studies in International Affairs*, Vol. 3, No. 2 (1990).



tribute to improve the democratic dimension of the European decision-making process.

### **More active national parliaments at the European level**

- the increased involvement of national parliaments is envisaged under the Lisbon Treaty, and it has become a necessity following the adoption of bail-out plans connected with the sovereign debt crisis;
- the specific modalities of this involvement have yet to be defined, as do the ways in which the national parliaments and the European Parliament interact, because the TSCG has failed to dispel the ambiguities in that area;
- the viability of the creation of a third chamber seems questionable, as it could only make the institutional system more top-heavy and more complicated without necessarily making it much more democratic, particularly in view of the fragmented and varied nature of the oversight powers exercised by the national parliaments.

## **5.3. A more “political” European Parliament would reinforce the EU’s legitimacy**

### **The European Parliament’s legitimacy should be further reinforced**

- the decreasing participation in the elections of the MEPs is negative politically, even if the turnout is not that bad if compared with the one in the US Congress;
- the European Parliament functions well, but not a lot of people are aware of it: there is then a major challenge in terms of information;
- in general, the MEPs are not an integral part of the political life of their country – which also affects the political visibility and role of the European Parliament.

### **The parties should structure better the conflict dimension of the European political choices**

- the fact that the MEPs are not compelled to grant an automatic support for a “government” is a weakness in terms of visibility, but should favour the structuration of cleavages based on substantive conflicts;
- it is not certain that the European Parliament’s temptation to cause difficulties for the Commission over “micro-management” issues has done a lot to boost Europe’s legitimacy;
- the priority is to use the quite good party discipline in the European Parliament to have less cross party consensus on all important votes: this would require the modification of the rules of procedure, but is first and foremost a matter of political attitude.

### **The proposal to offer the European Parliament the right to initiate legislation demands close and careful examination**

- such a proposal could help to strengthen the EU’s democratic legitimacy: from a citizen’s point of view, it is indeed difficult to explain that the MEP are deprived from this basic parliamentary right, even if it is not that obvious that the majority of the MEPs will necessarily work for the common good;
- giving the right of legislative initiative to the European Parliament would have a crucial impact both on the balance of powers among the various European institutions and on the Commission’s influence;
- an innovation of this magnitude could not be implemented without there being a “price to pay”, in other words, without the need to mediate between the legitimacy and the efficiency of the Community method.

## Annex 1

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### Programme of the seminar on the Community Method

- 09.30-10.00** Welcome and registration
- 10.00-10.15** Opening remarks by *Notre Europe* and BEPA
- 10.15-11.00** Keynote address by **José Manuel Barroso**,  
President of the European Commission
- 11.15-13.00** ***Community Method 2.0: Originality and Evolution***  
Moderator: **Stefanie Bolzen**, Die Welt  
**Renaud Dehousse**, Sciences Po Paris / *Notre Europe*  
**Philippe De Schoutheete**, Egmont  
**Franz Mayer**, University of Bielefeld

- 13.00-14.45**     ***Lunch – Discussion between***  
**Catherine Day**, European Commission  
**Klaus Welle**, European Parliament  
**Uwe Corsepius**, Council of the European Union
- 15.00-16.45**     ***New Challenges to the Community Method:  
Legitimacy and Effectiveness***  
Moderator: **Quentin Peel**, Financial Times  
**Jean-Paul Jacqu e**, College of Europe / TEPSA  
**Miguel Maduro**, European University Institute  
**Kalypso Nikola dis**, University of Oxford
- 16.45-17.30**     Conclusion by **Ant nio Vitorino**, President of *Notre Europe*

## Annex 2

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### **Opening Speech by the President of the European Commission José Manuel Barroso: “European Governance and the Community Method”<sup>9</sup>**

Ladies and Gentlemen,  
Dear friends,

I am pleased to join you today at this event and pleased also that we with BEPA are joining forces for the day with *Notre Europe*, one of Europe’s foremost think tanks. *Notre Europe* is renowned for its original thinking on European questions and boasts some distinguished people leading its work. In particular, I pay tribute to the work of *Notre Europe*’s Founding President, Jacques Delors and your current President, António Vitorino who will address the meeting later today. Both Jacques Delors and António Vitorino continue to give much to the cause of European integration and we are really very grateful for that.

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9. Also available on the [European Commission’s website](#).

We are here today to consider issues of governance. In particular, the governance of the European Union and the central dynamic within that – the Community method. I know that *Notre Europe* instituted a debate last year on the future of the Community method and we look forward to hearing some of the findings in the course of the day.

Since the inception of the European Community, there has been a debate on how best to build Europe. Inter-governmentalism has been favoured by some, and the Community method by others. In truth, we have built a genuinely unique *sui generis* organisation, thanks to a large extent to the Community method. Most of us here today feel pride in the achievement.

Sixty years after six countries signed the Treaty of Paris, we are now 27. And, a significant number of would-be members are knocking at the door to come in. So, despite all the recent upheavals, the EU remains a potent symbol of progress both politically and economically, and has a pole of attraction. This, in itself, is testimony to the success of the Union we have built and are building together.

And yet, we know that the financial and economic crises have tested our institutions, our solidarity and the faith of many in the European project. We were, let's be honest about this, unprepared for the scale and depth of the financial crisis and later the sovereign debt crisis that hit us. It is easy with hindsight to criticise, but all of us now understand that monetary union and fiscal union are two sides of the same coin and the latter was overlooked when our currency was launched, or at least the latter had at that time not the conditions to be proposed and accepted. We have paid a price for that omission. It should be a lesson for our future.

In any discussion about the future of Europe, talk invariably turns to methodologies, institutions and processes. As methods go, they do not come more profound or important than the Community method. This is the

reality. The very term evokes the spirit of the European integration process. I want to make that point: we are talking about a method but probably it is more than a method, it is a question of the culture, the political culture of our institutions, or if you want in more romantic way, the spirit of our project. In fact the origins of this method are to be found in the positions taken by the Founding Fathers of the European Community, and in the texts of the Paris and the Rome Treaties. We can look already at this definition in the creation of the High Authority for Coal and Steel.

I believe that both Robert Schuman and Jean Monnet defined in an excellent way the essence of European integration and the Community method. For Schuman, “a supranational institution, such as our Community, does not have the characteristics of a state; but it holds and exercises some sovereign powers”. Indeed, the transfer of legislative powers from the member states to the European level describes very well the nature of the European Union.

Monnet added another important dimension regarding the method of governance. I quote, “putting governments together and making national administrations cooperate starts with a good intention but fails as soon as there are differences in interests, if there is no independent political body capable of taking the common view and coming to a common decision”. I would in particular stress the ‘independent political body capable of taking the common view’. In other words, the existence of a supranational institution with the right of initiative and executive powers.

Of course very often the debate about the Community method is about the role of the Commission, and we all know that the Community method goes beyond the role of the Commission. In addition to the right of initiative of the Commission, the co-decision between the Council and the European Parliament constitutes today also an important element of the Community method, in particular in those cases decided by the qualified majority of member states.

This is, of course, accompanied by a Court of Justice which ensures the uniform interpretation of and compliance with the founding Treaties and with secondary legislation. This is a unique situation, both in historical and in global terms. A group of democratic countries has left the disorder of power politics and created an order based on independent institutions – truly independent institutions – and the rule of law. It is easy sometimes to forget the scale of what has been historically achieved.

When we needed to make progress, the Community method has delivered because it has been both an effective and a legitimate way to tackle some of the main challenges facing Europe. To build a strong level of convergence among a group of states with distinct experiences and different interests has been a huge task. Thanks, in large part, to the exercise of the right of initiative by the Commission and to the responsibility placed upon it to act as the guardian of the Treaties, thus guaranteeing respect for the rule of law, we have secured unprecedented co-operation and stability on our continent.

The Community approach is also necessary in the management of economic interdependence. Only independent institutions can create rules that benefit the economic interests of all. Only an institution sensitive to the general European interest can properly regulate the single market. The logic of conflicting national interests could never have created a common market in the first place. And let me tell you from my own experience, namely after the financial crisis, that if it was not because we have institutions called the European Commission and the European Court of Justice probably the internal market would already have disintegrated because of the nationalistic tendencies to renationalise some of the competencies and trends to accept the rules; the rules are applicable for others but not being so receptive when it comes to accept the rules that are applicable to ourselves.



Likewise, an independent institution such as the Commission with the competences to represent first the Community and then the Union on the world stage has played a major role in making Europe the biggest global trading power.

- A political Community among 27 countries.
- A common market of 500 million people.
- An increased, stronger entity in core global issues including in some extent in foreign policy and some security related matters.

These are some of the main achievements of recent decades. None of them could have happened without the unifying force of the Community method.

Although the stability and resilience of the Community method is remarkable, the reality of political change has imposed important democratic and institutional reforms upon us. As a result, the Lisbon Treaty reinforced the legislative and budgetary powers of the European Parliament. At the same time, the European Council was boosted by formal recognition as an institution, which in practice it already was – and also with the so-called permanent President, replacing for that purpose the rotating presidencies of the Council.

I welcome these developments. I know that this is controversial inside the most pro-European camp but I really welcome the developments of the re-enforcement of the powers of the European Parliament and also of the creating of the permanent President of the European Council.

Surely, we must recognize that, in a democratic Union, the directly-elected Parliament ought to be at the heart of the legislative process. And this, in turn, reinforces the democratic legitimacy of the Commission itself. As you know the College has to be approved by the directly elected MEPs and the President of the European Commission is indeed elected by the European

Parliament. It can even happen that he is re-elected. Representative democracy is thus well-established in Brussels.

Likewise, in an enlarged Union of 27 – very soon hopefully 28 – countries, and when European politics and domestic politics are becoming increasingly intertwined, in fact we are watching this now I think to a point we have never reached before, when the European debate becomes a national debate and when the national debate becomes a European debate, it is only natural that the Heads of State and Government should play a leading role, namely drawing the strategic orientations for the EU through this institution, the European Council. The relevant issue here is how much they are willing to play that role in full respect of the rules and the institutions the member states have themselves created. This is the important issue.

In the period since the Lisbon Treaty we have seen some important developments and there are some debates about the balance between institutions and processes. In reality I believe we are operating with both processes, and that was always part of the Community method: some intergovernmental approaches that are needed but also the respect for the supra-national institutions. From time to time, the emphasis is placed on one more than the other. And in this context, the Commission itself must play an important political role: that of an institution that builds trust between member states, not only as a political facilitator and honest broker but also between the different institutions: the European Council, the Council, the Parliament and the Commission.

In fact that is a personal remark I want to make: I believe that after entering into force of the Lisbon Treaty the role of the Commission now is freer because before it was the Commission – and I had that experience during my first mandate – that had a very important role in terms of brokering compromises and as a facilitator between the member states. Having now a permanent President of the European Council this should be one

of his most important tasks. That gives the Commission more room, more space to its role as initiator and sometimes to go deeper in the dialectics, sometimes there is some tension in the relationship between the Commission and the member states.

The institutional framework and policy processes of our Union are now being road tested. They are being tested against a backdrop of unprecedented challenges to our economic and financial systems.

In recent years, many people have predicted the demise of the Community method, part of this is part of the usual Cassandra atmosphere we are now living in Europe, also because they see the Community method as a victim of the crisis. I actually think that the opposite is true and as we steer the Union to calmer waters, the resilience of the Community method will replace talk of its demise.

Let's just for a moment look behind the headlines and consider the facts, the record of Community action and the Commission's involvement in response to the economic crisis.

First, the "Six-Pack" which entered into force last December, made up of five regulations and one directive, proposed by the Commission and approved by the Council and the Parliament last October. It represents the most significant reinforcement of economic governance in the EU since the launch of EMU nearly twenty years ago.

I do not know any other case in the world of so much transfer of competence of powers from national to the supra-national level as we have now in economic and financial terms with the so-called "Six-Pack". These are facts. I want to enforce this point because in fact there is resistance precisely because there is movement. It is precisely because there is movement in terms of further integration that we hear many talks about resistance.

Second, the five-point Roadmap to Stability and Growth presented by the Commission last October. We set out clear priorities for Europe, namely for Euro area – a decisive response on Greece, enhancing the Euro area’s backstops against the crisis, strengthening the banking system, frontloading stability and growth enhancing policies and building a more robust and integrated economic governance.

Here also some of these reforms that have been taking place now, whether we can consider some of them not going far enough or fast enough, the reality is that they represent a qualitative step of a great magnitude compared to the situation “*ex ante*”.

Third, financial regulation. Over the past three years, we have designed a new system of financial regulation in Europe. This was not easy, but it was necessary to ensure that we tackle some of the root causes of the crisis. Over thirty pieces of legislation have been tabled including the creation of independent supervising authorities – another complete novelty agreed by the 27 member states, independent supervising authorities at the European level – and also rules on derivatives, naked short selling and credit default swaps and another system of remuneration for bankers.

In addition, last November, the Commission published a Green Paper on the feasibility of introducing Eurobonds. Not perhaps the most popular document in every European capital, but a clear sign of the Commission’s political determination to advance the strategic European common interest at this time. It is an example of the Commission rising above short-term calculations and thinking in the long-term interest of European citizens.

Some of the fiscal provisions were included in the Treaty on Stability, Coordination and Governance in the EMU. Although the Community approach was from the very beginning the preference of the Commission, and not only of the Commission also of most of the member states, the

new “fiscal compact” is contained in an international agreement outside the Treaties because as you know unanimity for the revision of the current Treaties was unfortunately not possible.

It is important to emphasise that, despite the intergovernmental solution, the Commission will indeed be heavily involved in the operation of the “fiscal compact”. And then we have a paradox, the paradox is the following. It was the Commission itself that said to some of our member states: “some of the tasks, we do not want to perform them, precisely because we want to keep our role deriving from the treaties, from the EU treaties and not from an intergovernmental treaty.” And what is interesting and if there is time afterwards in discussion I could go more in detail with this, it was the member states that sometimes are not very enthusiastic about the role of the Commission were the ones who were asking us to go deeper and to assume more responsibilities. Precisely they have understood in practical terms, when it comes to concrete matters of surveillance and enforcement that they could not do without an independent institution that was the Commission, and that is the Commission.

To be frank there were at the beginning of that debate some ideas that I considered extremely dangerous and that we were able of course to avoid. The idea to create completely parallel structures, a kind of Commission Bis, a kind of a European Parliament Bis, so that we could fragment indeed the European Union and put at risk the integrity, not only the integrity of the single market but the integrity of the European Union. But that proposed solution was of course not retained. So it was true that the 25 member states that are now going to sign the “fiscal compact” also stated their intention to fold the international agreement into the existing Treaties within five years. Sometimes, in Europe, we are required to exercise a degree of pragmatism in order to achieve the longer term goals we seek. That was already in the original Schuman declaration.

And, if we are in any doubt about the need for the Community approach, let us remember that one of the key lessons of the crisis was that markets spotted and then exploited the deficiencies in European economic governance. Here, the key word is trust. A single currency cannot be sustained without independent institutions and effective decision-making processes, able to implement what has been agreed by all. That's why we have a Commission, that's why we have for instance the very important role of the ECB. And let me tell you that when we discussed with our major partners, from the United States to China, these issues, the real question they put to us is not so much about what is going to be the deficit or the debt of this or that country in the next 10 years.

The real question is about the political determination of the member states, namely the member states of the Euro area to sustain and support the Euro. And the more we advance in terms of integration, the more member states are ready to show the world, investors, markets, their own citizens, that this is for real, that they mean business when they say they will do whatever is necessary to protect the Euro, the more confidence there exists. So we have a very interesting situation where it was not the usual so-called "federalists" that were asking for more integrated governance of the Euro zone, it was in fact investors, investors coming outside of the world, that were telling us, sometimes with more friendly, sometimes with less friendly tone, that you need to go further in your economic integration if you want to have a single currency. And they are right. *Ad hoc* inter-governmental solutions, without involving the Community institutions, could not provide the stability necessary to build confidence. This has been a very healthy lesson for all our member states. Consequently, I believe the role of the Commission as the "economic government" of the Union, to put it more precise for the economic government for the competencies that have been entrusted to the Union level by the member states, this role of economic governance has prevailed and we are at the very heart of Europe's development as we climb out of the crisis. And I can make a

forecast that is not very difficult for me to make, you will see more and more in the near future, more demands on the European Commission to assume this role, precisely because of the new tasks that have been agreed by this fiscal compact and the need to have a clearer picture of what's going on, not only in terms of surveillance but also in terms of enforcement.

As we look to the future, we need to consider a number of issues around the Community method: is it efficient? Is it legitimate? Can it deliver what citizens expect? I am clear that on all these counts, the answer is a firm “yes”. But, we know that this is not obvious to all our partners. We cannot rely on the assumption that the legitimacy of our collective governance is universally understood and accepted. We have to earn political legitimacy on an ongoing basis, different from what happens, or at least in most of the cases happens with nation states, that they do not have to show their legitimacy everyday. Our Union needs what we call a legitimation by results. We are aware of this, we know this. That is why the question of political culture, the question of leadership is so important, also when it comes to discussing the Community matters. It's much more than processes and institutions and legal matters that of course are extremely important. It's about leadership and political culture. It is about democracy and legitimacy. This is one of the most difficult issues that we have to address. That is why we need to engage with our citizens on the merits of the solutions we propose, and we must win the public debate. It would be a complete mistake to think that the European project can succeed being a kind of elitist project. We have to go for the public debate and win it. If the policy choices we make are successful, we can speak with confidence of the “European way” of doing things.

If we want people truly to re-engage with the European project we must demonstrate that Europe adds value to their lives. We have to show that we are listening. In particular, Europeans are worried about the future of their economies and their jobs. They expect their institutions and their

leaders, at national and European level, to do all they can to promote economic growth and to create jobs. And rightly so. Europe is playing a central role here. Most of our member states do not enjoy much room for fiscal stimulus for growth-oriented measures. The main realistic sources of growth must come from the core of our Community approach: the single market and external trade policy. Matters where the member states already have agreed that competencies are at European level.

Let me mention a very recent example. Last week, 12 Heads of Governments sent the President of the European Council and myself a letter suggesting some measures to boost economic growth in Europe. All of them happen to fall into the Community sphere, and in all of them the Commission plays a central role. In fact, we have already been hard at work on most of them. And I've just replied to them, showing exactly what is the state of work in most, if not in all of these areas. This is a clear example of how the Community approach can contribute to growth and jobs in Europe and also how we need to combine the Community approach and the decisions taken at Community or European level with reforms and decisions taken at national level.

As a result of the crisis, there has never been a time when Europe has been asked to do so much. Citizens expect quick and decisive action to stimulate growth. At the same time, they do not want to be simply bystanders in the European political process. We need to strike the right balance between efficient economic governance and democratic legitimacy.

In this sense, this crisis may also turn into a drive for greater democracy within the Union. I believe it's already happening, that process. We are already feeling that process, feeling that need to go further in terms of increasing legitimacy, democratic legitimacy. In fact if you look at the positions taken by some of the political forces at European and even at national level, this is the debate. And this is a very interesting message



that I have been conveying to some of our international partners, from Washington to Beijing, and to New Delhi and to Brazil, it is the following. Did you see that the debate in Europe is not about how we are going to undo the European project, how we are going now to put in question what we have achieved. The debate is now how we are going to do to integrate further. Is it through the Community matter, is it through a kind of intergovernmental approach, is it through some kind of a mix?

The reality is that debate now in Europe, between the mainstream parties, between the capitals is how we are going to reinforce Europe and not how we are going to undo our project. We must recognize that national budgets, fiscal policies, economic governance are at the heart of national politics. The reinforcement of the competences of the Union and of the Commission in these areas raises therefore the issue of political and democratic legitimacy. We must not forget a lesson about today's Europe: more competences for the Union requires more democracy at the European level. Therefore, we must consider ways to strengthen European democracy. I have some ideas about this but the reality is that, this precisely because I am a democrat and I like to poetical debate, I think we need here to come up with new ideas, namely in terms of the cooperation between national democracies and European democracy.

Ladies and gentlemen that's why I prefer now to conclude with just very final remarks.

Ladies and Gentlemen,

People expect the President of the Commission to make the case for the Community approach – as I just have done. But frankly, I have done so not because I am concerned about the Commission being marginalised as some people pretend. Indeed as I've said the Commission has now competence that it never had in the history of the European integration, or indeed

because I have some theological or dogmatic ideological attachment to it. It's true that I am a very committed European, but what I'm telling you about the need of the Community method is based not only on my experience as Commission President almost 8 years now, but also my experience of 12 years in a national government. I believe that this is critical for the future of the European Union. We'll put at risk our Project if we undermine this Community approach. I continue to make the case for the Community approach because of the stability it brings, the effective decision-making it delivers and the fairness inherent in the system, namely in terms of relations among the member states themselves, smaller, bigger, more central, more peripheral, richer or not so rich. The Community method has prevailed because it is ultimately the most sustainable way of accommodating the extraordinary diversity in our Union. It is precisely because of European political, cultural and national diversity that we need it. It reconciles differences and promotes unity.

To put it simply, the reason why the Community method has survived numerous treaty changes, institutional reforms and enlargements is because it works. It may not be perfect, but we should be careful of dismissing or playing around with something that is arguably the rock on which our Union has been built. In a nutshell, the Community method is a creation that, if it did not exist, we would need to invent it.

Thank you for your attention and I wish a very fruitful and lively discussion.

## Annex 3

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### **Concluding remarks by the President of *Notre Europe* António Vitorino: “The Community Method: Historical Evolutions and Political Challenges”**

I would like to thank you all for the discussions that we have had in the course of this long day, allowing us to probe the “Community method” in detail. President Barroso’s opening speech and the dialogue that it prompted, the lunchtime debate with the Secretaries General of the Commission, of the European Parliament and of the Council, the speeches from the members of our two panels and the questions and comments from all of you: all of this has been extremely useful in fuelling and prolonging the debate<sup>10</sup> which *Notre Europe* has been endeavouring to foster since spring 2011, and of which this seminar is, of course, a salient moment.

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10. Debate on “[The European Union and its Methods](#)” on *Notre Europe*’s website.

Naturally, we are going to pursue this debate over the coming months because its outcome is crucial to the future of European construction. As you know, *Notre Europe* has already produced numerous publications on the topic, and indeed I am glad to be able to say that many of those publications have been quoted from here today. You may rest assured that further publications and possibly even further events are going to follow in the short and medium term.

It is, of course, difficult for me to summarise here in a comprehensive, in-depth fashion the lessons learned at this seminar, though we will be producing a written summary of them, in close conjunction with the BEPA, in the near future. So for the moment, I shall confine myself to making a few conclusive remarks on what I consider to be the most important points to have emerged from today's debates, while adding a few personal observations here and there.

### **1. A broad consensus leads us to highlight the benefits of the Community method in terms of flexibility.**

As we have seen, the application of the Community method has come a long way since the signing of the treaties that set up the ECSC and the Common Market. On each occasion, European construction has had to mediate between the imperatives of efficiency, of legitimacy and of necessity, and, more often than not, it is the Community method that has surfaced in the centre of this triangle.

And indeed the example of the recent announcement of a referendum in Ireland reminds us that a triangle is still unavoidable, even in the event of a treaty which is not yet a Community affair at this stage. The legitimacy of such a referendum is unquestioned, its effectiveness uncertain, and the need for it crucial inasmuch as while Irish approval may not be compulsory for the treaty to enter into force, it is crucial if the Irish wish to benefit from the "European Stability Mechanism's" financial aid...

## **2. At this juncture the European Council is part and parcel of the Community's institutional system.**

The European Council was first set up in the 1970s, since when, its role gradually became formalised, and it was sanctioned as a European institution by the Lisbon Treaty<sup>11</sup>: thus it is now part and parcel of the Community's institutional system, so that we should no longer be speaking of an "institutional triangle" but of an "institutional trapezium".

The other consequence is that we should not confuse the European Council's intervention with the "intergovernmental method", the latter term being reserved for cooperation forged outside of the Community framework (for instance, the Schengen agreement).

At this juncture, the European Council is an institution which is part of the Community method, a method that is sufficiently adaptable and flexible to acknowledge its role, primarily in terms of political input. There is absolutely no need to invent a new "method" for that!

## **3. The constant strengthening of the European Parliament's role has had a major impact on the functioning of the Community method.**

The development of the European Parliament's role is in singular contrast to that of the national parliaments' role: at the national level, political oversight has gradually but effectively replaced their traditional legislative function in the sphere of "European affairs"; while the gradual expansion and extension of the European Parliament's role has occurred above all in terms of legislative powers (and budgetary powers, thanks to the Lisbon Treaty), but rather less so in connection with powers of political oversight. Yet we should highlight the strong lack of symmetry in the oversight exercised with regard to the Council and the Commission, and the perverse effects triggered by the European Parliament's temptation to cause diffi-

11. Alain Dauvergne, "The Treaty of Lisbon: Assessment and Prospects as of Summer 2011", *Study No. 87, Notre Europe*, October 2011.

culties for the Commission over “micro-management” issues – a fact which has done nothing to boost Europe’s legitimacy. This situation is a result, in particular, of the “framework agreement” which the Commission and the European Parliament thrashed out after the fall of the Santer Commission when the Commission was in a position of major weakness, which is not the case today.

The increasingly frequent conclusion of “early agreements<sup>12</sup>” between the European Parliament and the Council has had another important consequence in terms of institutional balances: while extending co-decision procedure is extremely positive from the standpoint of legitimacy, in practical terms it leads the European Parliament and the Council to negotiate directly with each other and causes the Commission to show far greater hesitancy in the exercise of its right to withdraw its proposals. That is a practical consequence which needs to be underscored – without any moral judgment being implied one way or another.

#### **4. The joint empowerment of the European Parliament and of the European Council has had a major impact on the Commission’s exercise of its right of initiative.**

As highlighted in a recent study<sup>13</sup> published by *Notre Europe*, the Commission is coming under the increasing influence of these two players in its exercise of the monopoly that it holds in the field of legislative initiative.

This situation is understandable as long as we make a clear distinction between two aspects: the agenda setting of initiatives that require to be promoted at the European level, a register on which the European Council and the European Parliament play a far from negligible and a perfectly legitimate role; and the definition of the scope and substance of the ini-

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12. Olivier Costa, Renaud Dehousse and Aneta Trakalová, “Co-decision and ‘Early Agreements’: An Improvement or a Subversion of the Legislative Procedure?”, *Study No. 84, Notre Europe*, March 2011.

13. Daniela Corona, Costanza Hermanin and Paolo Ponzano, “The Power of Initiative of the European Commission: A Progressive Erosion?”, *Study No. 89, Notre Europe*, January 2012.

tiatives proposed, which is extremely important in order to put the debate and the final decision in their proper context, and in connection with which the Commission always plays a crucial role, which it must maintain.

In view of this, a proposal on the table that aims to offer the European Parliament the right to initiate legislation demands close and careful examination. Such a proposal could help to strengthen the European Union's democratic legitimacy, but it would have a crucial impact both on the balance of powers among the various European institutions and on the Commission's influence – an aspect which I feel the need to stress, even at the risk of sounding unpopular. What is certain is that an innovation of this magnitude could not be implemented without there being a “price to pay”, in other words, without the need to mediate between the legitimacy and the efficiency of the Community method.

## **5. The organisation of “differentiation” within the EU is an acid test for the Community method, as shown by the adoption of the “Treaty on Stability, Coordination and Governance in the Economic and Monetary Union<sup>14</sup>” (“TSCG”).**

The reform of Economic and Monetary Union governance currently under way demands a response to the crucial issue of a differentiation compatible with the application of the Community method.

I would like to point out in this connection that the “enhanced cooperations” instituted by the Amsterdam Treaty are, in theory, an ideal formula because they allow willing member states to move forward while leaving the door open for those that may wish to join them at a later date. Yet I have no choice but to note that to date it has proven possible to launch only two cases of enhanced cooperation, in connection with the right to divorce and with the European patent – because even though the Schengen agreement harks back in spirit to such a step, it was in fact concluded outside the treaty framework.

14. Valentin Kreilinger, “The Making of a New Treaty: Six Rounds of Political Bargaining”, *Policy Brief No. 32, Notre Europe*, February 2012.

The reform of the governance of the EMU – which it is worthwhile stressing, is not an “enhanced cooperation” – is renewing the terms of the debate, in particular as far as the involvement of Community institutions is concerned. As the member states see it, it is only logical that the EMU should only concern the members of the “euro-group”, even though we have seen that a majority of non-eurozone member states were eager to sign the TSCG. But it is difficult to envisage a similar rationale being adopted in connection with the Commission or with the European Parliament, because it is hard to see why and how only their members from eurozone countries should take part in debates and decisions relating to the eurozone when the two institutions represent Europe’s general interests and the European citizens in the broader sense of the term.

This is a choice which I feel to be crucial for the future, and one which is pregnant with consequences. It is a matter of safeguarding the foundations of the Commission’s and the European Parliament’s political legitimacy while also safeguarding the EU’s institutional unity. At the same time, we need to envisage the prospect of an enhanced cooperation being subscribed to by only nine states yet which, in view of the issues in play, could well involve a majority of, or even exclusively, members of the Commission and of the European Parliament from the other eighteen EU member countries. That is a political challenge that we are going to have to probe well in advance.

## **6. The various institutions’ political representativeness affects the degree to which they participate in the Community method’s application.**

To describe the challenge of political representativeness, I could mention the European Council or the European Parliament, but I shall focus here on the Commission and its statute because they have been very much in the limelight today.



The Commission currently consists of a national from each member state, and at the same time it is vested with its authority by the political majority in the European Parliament. Should the President of the European Commission be directly nominated by the European Parliament rather than by the European Council, as happens today, in an effort to clearly reaffirm the Brussels college of commissioners' parliamentary legitimacy? Or on the contrary, should a dual legitimacy be preserved by maintaining the link with the European Council and avoiding forging an exclusive link with the European Parliament, which would help to impart a strong political connotation to the Commission?

I well remember that, during the Convention that elaborated the European constitutional Treaty, John Bruton suggested merging the posts of President of the Commission and President of the European Council, and to then proceed with the direct election of this new President. Michel Barnier, for his part, suggested adopting both national and transnational lists in the European elections, specifying that the number one candidates on those lists would be the natural candidates to the post of President of the Commission.

Be all of that as it may, it is incumbent upon me to specify that the Commission should continue to enjoy the backing of a broad political coalition, and that it would be dangerous for its internal functioning to be based on the co-existence of a majority and of an opposition. Nor should we lose sight of the goal involving a reduction in the size of the Commission, which would make it possible to strengthen both its collegial nature and the exercise of its responsibility towards the European Parliament and towards the European citizens.

## **7. The functioning of the Community method is finally facing a challenge in terms of democratic oversight<sup>15</sup>.**

In this connection, interaction between the European Commission and European Parliament appears to have found its level, while democratic oversight exercised over the Council is further from that goal due to the variety of national practices in the way parliaments monitor the work of their individual national governments.

There is a key issue here on which I would like to dwell for a moment, namely the joint strengthening of democratic legitimacy<sup>16</sup> and parliamentary legitimacy at the national and European levels. The strengthening of European legitimacy must not become synonymous with the weakening of national democracy, because the two levels must interact.

One of the most difficult obstacles that we encounter is that national elections only rarely focus on European issues, but that should not discourage us from seeking ways of involving national parliaments to a greater extent, not only with regard to their governments but also at the Community level.

This increased involvement is envisaged under the Lisbon Treaty, and it has become a necessity following the adoption of bail-out plans connected with the sovereign debt crisis. But it is obvious that the specific modalities of this involvement have yet to be defined, as do the ways in which the national parliaments and the European Parliament interact, because the “TSCG” has failed to dispel the ambiguities in that area.

In this connection, I would simply like to point out that the viability of the creation of a third chamber, a proposal which has occasionally been mooted, seems to me to be questionable. I fear that it would only make the institutional system more top-heavy and more complicated without necessarily making it much more democratic, particularly in view of the fragmented and varied nature of the oversight powers exercised by the national parliaments.

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15. Renaud Dehousse, “The ‘Fiscal Compact’: Legal Uncertainty and Political Ambiguity”, *Policy Brief No. 33, Notre Europe*, February 2012.

16. Yves Bertoncini, “The EU, Still Seeking Legitimacy”, *Tribune, Notre Europe*, November 2011.

That winds up my “concluding remarks”, which are of course mere pointers that beg future development. Thank you again for your attention, and I would also like to thank the BEPA and the European Commission for helping to make this day such a success.



## Legal Mentions

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## Seminar on the Community Method

### Elements of synthesis

The Bureau of European Policy Advisers (BEPA) and *Notre Europe* joined forces to organise the seminar “Community Method: Evolution, Effectiveness and Legitimacy” which took place in Brussels on 28 February 2012 and which was attended by more than 100 decision-makers and experts.

This synthesis offers a synopsis of the discussions that are reported under the “Chatham House” rule. With a foreword by Jacques Delors, it also contains the keynote speech delivered by the President of the European Commission, José Manuel Barroso and the concluding remarks made by the President of *Notre Europe*, António Vitorino.

The seminar forms part of the debate on the Community method which *Notre Europe* has launched in 2011. In the light of the strategically important albeit apparently technical issues at stake, *Notre Europe* aims to pursue its reflection on the topic in the future.

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